



SACHI A. HAMAI
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS

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BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

9 JANUARY 9, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

January 19, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVE THE RECOMMENDATION OF THE REFEREE TO ADJUST THE AMOUNT OWED BY
MAGIC CARPET MOTOR INN LOCATED AT 11509 SOUTH VERMONT AVENUE IN LOS
ANGELES IN ACCORDANCE WITH COUNTY CODE SECTION 4.72.260**

SUBJECT

As a result of an audit of hotel/motel operators in unincorporated areas of Los Angeles County, and through the appeal process, it has been determined that Magic Carpet Motor Inn, located at 11509 South Vermont Avenue in Los Angeles, owes Los Angeles County \$76,797 as a result of unpaid Transient Occupancy Taxes in accordance with Los Angeles County Code (Code) Chapter 4.72.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve the recommendation in the attached report from the Referee to adjust the amount owed to the County from \$97,195 to \$76,797 in response to the appeal filed by Magic Carpet Motor Inn.
2. Instruct the Executive Officer to serve a copy of this decision upon the appellant and instruct the appellant to immediately pay \$76,797 in accordance with Code Section 4.72.300.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Treasurer and Tax Collector hired an independent auditing through the Auditor-Controller's Master Agreement to conduct an audit of all hotel/motel operators in unincorporated areas of the County to determine if they were paying taxes for Fiscal Years 2004-05, 2005-06 and 2006-07. The auditing firm concluded that Magic Carpet Motor Inn had not paid all required taxes and owed the County \$170,547.

On May 23, 2008, the Treasurer and Tax Collector issued an audit invoice to Magic Carpet Motor Inn for payment of this debt. Magic Carpet Motor Inn subsequently paid \$70,000 toward the amount owed and notified the Treasurer and Tax Collector they were appealing the remaining amount of \$100,547 in accordance with Section 4.72.240 of the Code. Subsequent to the Appeal Hearing, which was held on June 18, 2008, Magic Carpet Motor Inn worked with the Treasurer and Tax Collector to clarify and discuss certain issues raised at, or subsequent to, the Appeal Hearing, including documentation of long term stays and the applicability of the Transient Occupancy Tax to County referrals. On September 2, 2009, the Treasurer and Tax Collector notified Magic Carpet Motor Inn of their conclusion that as a result of the additional information provided, the remaining amount due was revised from \$100,547 to \$97,195.

Magic Carpet Motor Inn representatives appealed this finding in accordance with Section 4.72.250 of the Code, resulting in the second level appeal heard on October 22, 2009. The Referee requested additional information from Magic Carpet Motor Inn regarding issues discussed at the hearing. This information was provided to the Executive Office on November 15, 2009. Upon reviewing the additional information, the Referee concluded that the amount owed should be reduced from \$97,195 to \$76,797.

Implementation of Strategic Plan Goals

The recommendations are consistent with the principles of County Strategic Plan Goal No. 4 (Fiscal Responsibility) by ensuring compliance with Code, Chapter 4.72.

FISCAL IMPACT/FINANCING

Revenue will be provided to the County general fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Code Chapter 4.72 requires hotel/motel operators in the unincorporated area of the County to collect Transient Occupancy Tax at a rate of 12 percent and remit the collected tax monthly to the Treasurer and Tax Collector. The Code also permits the Treasurer and Tax Collector to audit hotel/motel operators for a period of up to three years.

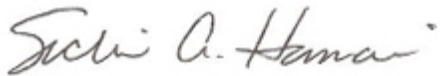
The Code permits hotel/motel operators who disagree with the audit findings to appeal the findings first to the Treasurer Tax Collector, and then to your Board, who may either hear the appeal or appoint a referee.

On June 4, 2008, your Board authorized the Executive Officer of the Board of Supervisors to appoint experienced and qualified senior County managers, or qualified senior managers who have retired from County service, to act as referees, pursuant to Code Section 4.72.270.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

No impact.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sachie A. Hamai". The signature is fluid and cursive, with a small mark at the end.

SACHI A. HAMAI

Executive Officer, Board of Supervisors

SAH:da

Enclosures

c: Chief Executive Officer
Acting County Counsel
Treasurer and Tax Collector

December 8, 2009

Sachi Hamai, Executive Officer
County of Los Angeles, Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

Dear Ms. Hamai:

**Re: TRANSIENT OCCUPANCY TAX THIRD LEVEL APPEAL HEARING
MAGIC CARPET MOTOR INN**

Representatives of the Magic Carpet Motor Inn located at 11509 South Vermont in Los Angeles filed an appeal of the Treasurer Tax-Collector's (TTC) determination that the Magic Carpet Motor Inn owes the County \$97,195 in unpaid Transient Occupancy Taxes, including the associated interest and penalties. This amount consists of \$167,195 in gross taxes, penalties and interest due, less a \$70,000 payment previously made by Magic Carpet Motor Inn.

In accordance with County Code Section 4.72.260, I served as a Referee and heard the second appeal of this issue on October 22, 2009. My obligations as Referee were to hear the appellant and any other competent witnesses and decide whether the determination of the TTC was correct or not, and if not what tax, interest or penalties, if any, are due to the County from the appellant.

Conclusion

In my opinion, the determination of TTC was substantially correct. However, I believe that adjustments totaling \$20,398 should be made resulting in a net amount owed of \$76,797. Additional detail regarding these adjustments is included in the body of this letter.

Background

Section 4.72 of the County Code applies to all hotel/motel operators in the unincorporated area of the County. Basically, it requires the hotel operators to collect a tax equal to 12% of the total rent paid for all persons defined by the Code as a transient and to remit these payments to the County on a monthly basis. In general, the code defines a transient as any person staying at the hotel for a period of 30 consecutive calendar days or less. The code does provide for waiving the tax for the first 30 days in cases where there is a written agreement, in advance, documenting the fact that the person intends on staying at the hotel for a period in excess of 30 days.

The County hired an independent auditing firm to conduct an audit of all hotel/motel operators to determine if they were paying the tax for fiscal years 2004-05, 2005-06 and 2006-07. The Auditor concluded that Magic Carpet Motor Inn had not paid all required taxes and owed the County \$170,547.

Magic Carpet Motor Inn filed an appeal of the audit findings with TTC. The appeal was heard and on September 2, 2009 TTC issued their decision. Essentially, TTC adjusted the amount owed to reflect taxes on occupants who were housing referrals from government agencies. This had the impact of lowering the gross amount due by \$3,352. The revised net amount owed to the County by Magic Carpet Motor Inn was as follows:

• Amount due as reflected in the original audit report:	\$170,547.00
• Less: Adjustments allowed from first appeal hearing:	\$ (3,352.00)
• Less: Lump sum payment made by Magic Carpet Motor Inn:	<u>\$ (70,000.00)</u>
• Net Amount Due	<u>\$ 97,195.00</u>

Magic Carpet Motor Inn representatives appealed TTC's findings resulting in the second level appeal heard on October 22, 2009.

Second Level Appeal

Mr. Charles Williams and Ms. Theresa Williams from Magic Carpet Motor Inn were present at the hearing as well as Damia Johnson from TTC and Barbara Goul from the Office of the County Counsel was also present.

There were two core issues raised by Magic Carpet Motor Inn at this appeal. They are as follows:

Deduction of Taxes from Gross Rents

During the three-year audit period (fiscal years 2004-05, 2005-06 and 2006-07) Magic Carpet Motor Inn remitted \$41,515 of taxes to the County. At the hearing, Magic Carpet Motor Inn representatives stated that they believed these taxes were incorrectly included in the "Gross Rents" amount used by the Auditor in calculating taxes due the County. The effect being that the taxes and the associated interest and penalties due to the County were overstated.

I reviewed the audit work papers prepared by the Auditor (i.e., Simpson and Simpson) including the related internal control memos and schedules used to calculate taxes due as well as individual hotel registration cards. The Auditor concluded that Magic Carpet Motor Inn did not separately reflect the amount of taxes collected from occupants on the individual registration cards. Instead, Magic Carpet annotated the cards with the gross amount collected, inclusive of any taxes collected. Since the individual cards did not separately disclose a tax amount, the

Auditor used Gross Rents (i.e., total funds collected) as the basis for calculating taxes due the County.

I concur with the Auditor that the controls used by Magic Carpet Motor Inn to document hotel stays were weak and in fact precluded the identification of taxes paid by any individual occupant. However, the total amount of total taxes paid by Magic Carpet Motor Inn during the audit period is readily ascertainable from TTC records and I believe these amounts should have been deducted from Magic Carpet's gross proceeds prior to calculating taxes due the County. Accordingly, I concur with Magic Carpet Motor Inn on this issue. At my request, TTC personnel have revised the schedule to reflect the deduction of these taxes. The net effect of this is to reduce the amount of taxes, penalties and interest owed to the County by \$ 7,835.

Stays in Excess of 30 Days

Generally, the Transient Occupancy Tax applies for the first 30 consecutive calendar days or less that an individual stays at the hotel. Taxes are not charged once this 30-day limit is reached. In addition, the County Code does provide for waiving the tax even for the first 30 days in cases where there is a written agreement, in advance, documenting the fact that the person intends on staying at the hotel for a period in excess of 30 days.

During the three years audited, Magic Carpet Motor Inn collected approximately \$1.25 million in gross rents. The Auditor did not allow any exemptions for long-term stays. Basically, all rent collected was treated as taxable. The Auditor reached this conclusion because Magic Carpet Motor Inn did not maintain the requisite documentation (i.e., a written agreements) to demonstrate that, at the time of initial occupancy, the individual intended to stay longer than 30 days. In addition, Magic Carpet Motor Inn did not annotate any of their registration cards with check out dates.

At the hearing, the Magic Carpet Motor Inn representatives indicated that there were fact individuals who stayed in excess of thirty days and requested that the rents associated with these situations be deducted from the taxable rent amounts. I requested additional documentation from Magic Carpet Motor Inn in this regard which I received and reviewed during November, 2009.

The records consisted of a description the methodology used to identify individuals who stayed in excess of 30 days, a chronology of the occupants' stay and the applicable registration cards. As indicated earlier, Magic Carpet Motor Inn did not annotate check out dates on the registration cards. However, they did annotate each card associated with an individual who

had reached the 30-day limit with an "M" as an indication that they were a monthly tenant. The rents associated with these individuals totaled \$65,045

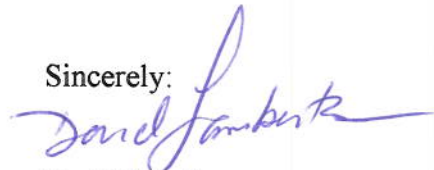
As indicated previously, 100% of the rents collected by Magic Carpet Motor Inn were categorized as taxable by the Auditor. While there is no doubt that the records maintained by Magic Carpet Motor Inn were far less than ideal, they did provide alternate documentation subsequent to the second hearing. Additionally, the exemptions Magic Carpet is seeking only constitutes 5% of the total rents collected during the audit period and I believe it is a reasonable expectation that some occupants stayed in excess of thirty days. Therefore, I recommend that the \$65,045 be deducted from the gross taxable rents.

At my request, TTC personnel have revised the schedule to reflect the deduction of these rents. The net effect of this is to reduce the amount of taxes, penalties and interest owed to the County by \$ 12,563.

With the exception of the adjustments described above, I believe that the determination of the Treasurer Tax-Collector were correct. Taking into account these adjustments, and the \$70,000 previously remitted, Magic Carpet Motor Inn owes the County of Los Angeles \$76,797 associated with unpaid Transient Occupancy Taxes.

Please let me know if you have any questions.

Sincerely:



David Lambertson.

LOS ANGELES COUNTY TREASURER & TAX COLLECTOR
TRANSIENT OCCUPANCY TAX (TOT) AUDIT
FOR FISCAL YEARS 2004-05 THROUGH 2006-07
Magic Carpet Motor Inn

Exit Conference Date		04/08/08	TTC Adjustments - 1st Appeal		Referee Adjusts - 2nd Appeal												Total Penalties and Interest		Total Due
Period	Taxable Rents Reported to TTC	Condition 1 (a)	Condition 2 (b)	Lease Taxes Paid	Lease Steps > 30 days	Actual (Audited) Taxable Rents	Under (Over) Reported Gross Rents	Additional Tax Rate 12% on Under Reported Gross Rents	Lease Payment Penalty 10% (Code 4.172.00)	Lease Payment: Cost of Delinquency 10% (late 30 days) (Code 4.172.170)	Delinquency Date	Lease Payment: 1.5% per month (Code 4.172.100)	# of Months	Total Interest Amount	Total Penalties and Interest	Total Due			
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q			
Jul-04	\$ 8,295	23,150	(400)	(895)	(2,550)	27,500	19,205	2,305	231	231	09/01/04	43	1,499	1,958	4,293				
Aug-04	\$ 9,188	23,590	(1,110)	(1,102)	(3,220)	27,046	18,458	2,215	222	222	10/01/04	42	1,404	1,848	4,093				
Sep-04	8,232	23,085	(880)	(880)	(4,900)	25,729	17,497	2,100	210	210	11/02/04	41	1,299	1,719	3,819				
Oct-04	8,227	22,980	(320)	(887)	(3,900)	28,000	17,773	2,133	213	213	12/01/04	40	1,289	1,715	3,848				
Nov-04	8,489	23,400	(1,016)	(1,016)	(2,180)	28,683	20,194	2,423	242	242	01/01/05	39	1,427	1,911	4,334				
Dec-04	8,703	23,550	(1,044)	(1,044)	(1,200)	30,308	21,508	2,593	259	259	02/01/05	38	1,488	2,006	4,599				
Jan-05	8,849	24,075	(1,159)	(1,159)	(880)	32,768	23,137	2,776	278	278	03/01/05	37	1,552	2,108	4,884				
Feb-05	8,893	23,935	(940)	(1,054)	(880)	30,794	21,931	2,632	263	263	04/01/05	36	1,432	1,958	4,590				
Mar-05	9,742	24,295	(280)	(1,169)	(1,350)	31,238	21,498	2,580	258	258	05/03/05	35	1,393	1,879	4,459				
Apr-05	8,074	22,595	(80)	(1,089)	(1,350)	28,910	19,839	2,380	239	239	06/01/05	34	1,224	1,700	4,080				
May-05	8,858	22,150	(1,063)	(1,063)	(2,340)	27,605	18,747	2,280	226	226	07/01/05	33	1,123	1,573	3,823				
Jun-05	8,992	22,570	(560)	(1,079)	(2,340)	29,923	20,931	2,512	251	251	08/02/05	32	1,215	1,717	4,229				
FY 04-05	105,292	280,335	(3,380)	(12,794)	(23,380)	347,103	240,811	28,899	2,890	2,890		31	1,577	22,082	50,991				
Jul-05	\$ 8,743	21,380	(280)	(1,049)	(400)	28,394	19,651	2,358	236	236	09/01/05	31	1,105	1,577	3,935				
Aug-05	9,136	21,925	(280)	(1,098)	(2,400)	26,865	17,949	2,142	214	214	10/01/05	30	873	1,401	3,543				
Sep-05	8,705	21,015	(1,000)	(1,045)	(2,950)	24,725	18,020	1,922	192	192	11/01/05	29	844	1,228	3,150				
Oct-05	8,781	21,095	(880)	(1,054)	(395)	27,747	18,966	2,276	228	228	12/01/05	28	965	1,421	3,697				
Nov-05	8,808	21,585	(360)	(1,057)	(1,985)	27,289	18,483	2,218	222	222	01/01/06	27	907	1,351	3,589				
Dec-05	10,607	25,915	(560)	(1,273)	(3,220)	31,489	20,882	2,503	250	250	02/01/06	26	986	1,496	3,989				
Jan-06	9,861	25,480	(800)	(1,153)	(1,180)	32,168	22,307	2,877	288	288	03/03/06	25	1,012	1,548	4,225				
Feb-06	9,426	23,875	(1,120)	(1,131)	(2,400)	29,650	20,224	2,427	243	243	04/01/06	24	894	1,370	3,797				
Mar-06	9,854	28,730	(280)	(1,182)	(2,120)	35,002	25,148	3,018	302	302	05/02/06	23	1,052	1,659	4,074				
Apr-06	9,831	25,750	(560)	(1,180)	(2,400)	31,441	21,810	2,593	259	259	06/02/06	22	985	1,383	3,978				
May-06	9,899	27,750	(800)	(1,180)	(2,160)	32,543	22,574	2,709	271	271	07/01/06	21	864	1,406	4,115				
Jun-06	9,892	27,485	(1,187)	(1,187)	(880)	35,310	25,418	3,050	305	305	08/01/06	20	1,537	1,537	4,567				
FY 05-06	113,611	280,945	(5,720)	(13,633)	(22,480)	362,723	249,112	29,893	2,990	2,990		31	1,584	17,394	47,287				
Jul-06	\$ 9,713	27,985	(520)	(1,169)	0	38,012	26,298	3,156	316	316	09/01/06	19	912	1,544	4,700				
Aug-06	9,821	25,635	(380)	(1,179)	(1,350)	32,537	22,716	2,726	273	273	10/01/06	18	747	1,283	4,019				
Sep-06	9,623	24,813	(1,143)	(1,143)	(1,350)	30,088	20,565	2,488	247	247	10/01/06	17	640	1,134	3,802				
Oct-06	9,675	28,750	(1,010)	(1,161)	(2,325)	31,929	22,254	2,870	287	287	12/01/06	16	652	1,186	3,656				
Nov-06	9,807	29,375	(1,177)	(1,177)	(2,400)	32,605	22,788	2,736	274	274	01/01/07	15	627	1,175	3,911				
Dec-06	9,920	29,558	(520)	(1,180)	(1,080)	34,088	24,166	2,900	290	290	02/01/07	14	621	1,201	4,101				
Jan-07	9,308	28,235	(2,010)	(1,117)	0	34,418	26,106	3,013	301	301	03/01/07	13	600	1,202	4,215				
Feb-07	11,394	25,610	(1,020)	(1,394)	(1,500)	33,090	21,726	2,907	291	291	04/01/07	12	479	1,001	3,608				
Mar-07	11,501	31,735	(1,380)	(1,380)	(1,250)	40,606	29,105	3,493	349	349	05/01/07	11	580	1,288	4,761				
Apr-07	11,911	28,455	(1,885)	(1,429)	(2,850)	34,202	22,291	2,875	286	286	06/01/07	10	412	946	3,623				
May-07	12,535	29,230	(1,504)	(1,504)	(4,200)	36,091	23,526	2,823	282	282	07/03/07	9	399	963	3,778				
Jun-07	10,983	29,885	(280)	(1,318)	(880)	38,410	27,427	3,291	329	329	08/01/07	8	408	1,069	4,357				
FY 06-07	126,061	331,986	(9,370)	(15,128)	(18,185)	414,044	287,983	34,558	3,457	3,457		31	7,077	13,991	48,549				
GRAND TOTAL	345,964	902,946	(18,480)	(44,515)	(65,045)	1,123,870	777,006	93,350	9,337	9,337		31	34,773	53,447	146,767				

nt made by Operator on June 5, 2008:	\$ 70,000
Total Due	\$ 76,797

(b) Adjustments for allowable exemptions for referrals from government agencies